

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

MICHAEL CRAIG NAVIN

§

VS.

§

CIVIL ACTION NO. 4:10-CV-770-Y

§

RICK THALER,

§

Director, T.D.C.J.

§

Correctional Institutions Div., §

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS  
AND ORDER DENYING CERTIFICATE OF APPEALABILITY

In this action brought by petitioner Michael Craig Navin under 28 U.S.C. § 2254, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on February 23, 2011; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on March 18, 2011.

The Court, after **de novo** review, concludes that the Petitioner's objections must be overruled, that the motion to dismiss should be granted, and that the petition for writ of habeas corpus should be dismissed, for the reasons stated in the magistrate judge's findings and conclusions.

Therefore, the findings, conclusions and recommendation of the magistrate judge are ADOPTED.

The respondent's motion to dismiss (docket no. 14) is GRANTED.

Petitioner Michael Craig Navin's petition for writ of habeas corpus is DISMISSED WITHOUT PREJUDICE, except as to any application of the federal statute of limitations or other federal procedural

bar that may apply.<sup>1</sup>

*Certificate of Appealability*

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.<sup>2</sup> Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."<sup>3</sup> The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."<sup>4</sup> A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."<sup>5</sup>

Upon review and consideration of the record in the above-referenced case as to whether petitioner Navin has made a showing that reasonable jurists would question this Court's rulings, the Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the February 23, 2011, Findings, Conclusions, and Recommendation of the United States

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<sup>1</sup>A one-year statute of limitations is applicable to the filing of non-capital § 2254 habeas corpus petitions in federal court. See 28 U.S.C.A. § 2244(d)(1-4)(West 2006). The statute of limitations is tolled, however, while a properly filed application for state post-conviction or other collateral review is pending. 28 U.S.C.A. § 2244(d)(2)(West 2006).

<sup>2</sup>See Fed. R. App. P. 22(b).

<sup>3</sup>RULES GOVERNING SECTION 2254 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS, RULE 11(a) (December 1, 2010).

<sup>4</sup>28 U.S.C.A. § 2253(c)(2)(West 2006).

<sup>5</sup>*Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003), citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Magistrate Judge.<sup>6</sup>

Therefore, a certificate of appealability should not issue.

SIGNED March 29, 2011.

  
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TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE

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<sup>6</sup>See Fed. R. App. P. 22(b); see also 28 U.S.C.A. § 2253(c)(2) (West 2006).